

# TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Schwing America, Inc.		02/15/2009	CORPORATION: MINNESOTA
RECEIVING PARTY DATA			
Name:	Wells Fargo Bank, National Association		
Street Address:	90 South 7th Street		
Internal Address:	Loan Adjustment Group		
City:	Minneapolis		
State/Country:	MINNESOTA		
Postal Code:	55402		
Entity Type:	National Banking Association: UNITED STATES		
PROPERTY NUMBERS Total: 10			
Property Type	Number	Word Mark	
Registration Number:	1314329	THINK SCHWING FOR CONCRETING WITH CONFIDENCE	
Registration Number:	1300173	FOR CONCRETING WITH CONFIDENCE...THINK SCHWING	
Registration Number:	1300172	THINK SCHWING	
Registration Number:	1317648	ROLL AND FOLD	
Registration Number:	1833116	SFMS	
Registration Number:	3047171	ROCK VALVE	
Registration Number:	3038855	ROLL & FOLD	
Serial Number:	76694523	SMART DRUM	
Serial Number:	76694566	SCHWING SELECT	
Serial Number:	76694532	SCHWING ELITE	
CORRESPONDENCE DATA			
Fax Number: (612)604-6800			
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.			

OP \$265.00 1314329

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TRADEMARK  
 REEL: 003989 FRAME: 0522

Phone: 612.604.6582  
Email: dkelly@winthrop.com, trademark@winthrop.com  
Correspondent Name: Daniel J. Kelly  
Address Line 1: 225 South Sixth Street  
Address Line 2: Suite 3500  
Address Line 4: Minneapolis, MINNESOTA 55402

ATTORNEY DOCKET NUMBER:	3411-275
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NAME OF SUBMITTER:	Daniel J. Kelly
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Signature:	/Daniel J. Kelly/
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Date:	05/19/2009
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**Total Attachments: 10**

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## PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of February 15, 2009, is made by and between Schwing America, Inc., a Minnesota corporation having a business location at the address set forth below next to its signature (the "Debtor"), and Wells Fargo Bank, National Association ("Wells Fargo") in its capacity as administrative agent on behalf of itself and Bank of America, N.A. ("Bank of America") (Wells Fargo as a lender and Bank of America are sometimes collectively referred to herein as the "Lenders"), and having a business location at the address set forth below next to its signature.

### Recitals

Company, Wells Fargo, as administrative agent, and the Lenders are parties to a Amended and Restated Revolving Credit and Term Loan Agreement dated as of April 30, 2008 (as the same has heretofore and may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Lenders may now or hereafter extend credit to or for the account of Company.

As a condition to extending credit to or for the account of Company, the Lenders have required the execution and delivery of this Agreement by Company.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Patents" means all of Company's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of Company's right, title and interest in and to:

- (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each,
- (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, and (iv) licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. Company hereby irrevocably pledges and assigns to, and grants Wells Fargo, as administrative agent, a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure

payment of the Indebtedness. As set forth in the Credit Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Company. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Company represents, warrants and agrees as follows:

- (a) Existence; Authority. Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of Company.
- (b) Patents. Exhibit A accurately lists all Patents owned or controlled by Company as of the date hereof, or to which Company has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Company owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Company shall within 60 days provide written notice to Wells Fargo, as administrative agent with a replacement Exhibit A, which upon acceptance by Wells Fargo, as administrative agent shall become part of this Agreement.
- (c) Trademarks. Exhibit B accurately lists all Trademarks owned or controlled by Company as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Company's or any Affiliate's business(es). If after the date hereof, Company owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to Company's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Company shall promptly provide written notice to Wells Fargo, as administrative agent, with a replacement Exhibit B, which upon acceptance by Wells Fargo, as administrative agent, shall become part of this Agreement.

- (d) Affiliates. As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by Company, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then Company shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Company; or (ii) notify Wells Fargo, as administrative agent, as of such item(s) and cause such Affiliate to execute and deliver to Wells Fargo, as administrative agent, a patent and trademark security agreement substantially in the form of this Agreement.
- (e) Title. Company has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Company (i) will have, at the time Company acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.
- (f) No Sale. Except as permitted in the Credit Agreement, Company will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Wells Fargo's prior written consent.
- (g) Defense. Company will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.
- (h) Maintenance. Company will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Company covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing Wells Fargo, as administrative agent: (i) sufficient written notice, of at least 30 days, to allow Wells Fargo to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization

to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

- (i) Wells Fargo's Right to Take Action. If Company fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Wells Fargo, as administrative agent, gives Company written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Company notifies Wells Fargo, as administrative agent, that it intends to abandon a Patent or Trademark, Wells Fargo may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Company (or, at Wells Fargo's option, in Wells Fargo's own name, as administrative agent) and may (but need not) take any and all other actions which Wells Fargo may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.
- (j) Costs and Expenses. Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Company shall pay Wells Fargo on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Wells Fargo in connection with or as a result of Wells Fargo's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Wells Fargo at the Default Rate.
- (k) Power of Attorney. To facilitate Wells Fargo's taking action under subsection (i) and exercising its rights under Section 6, Company hereby irrevocably appoints (which appointment is coupled with an interest) Wells Fargo, or its delegate, as the attorney-in-fact of Company with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Company, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Company under this Section 3, or, necessary for Wells Fargo, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third

party. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Indebtedness.

4. Debtor's Use of the Patents and Trademarks. Company shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) Company shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, Wells Fargo, as administrative agent may, at its option, take any or all of the following actions:

- (a) Wells Fargo may exercise any or all remedies available under the Credit Agreement.
- (b) Wells Fargo may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.
- (c) Wells Fargo may enforce the Patents and Trademarks and any licenses thereunder, and if Wells Fargo shall commence any suit for such enforcement, Company shall, at the request of Wells Fargo, do any and all lawful acts and execute any and all proper documents required by Wells Fargo in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Wells Fargo. A waiver signed by Wells Fargo shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Wells Fargo's rights or remedies. All rights and remedies of Wells Fargo shall be cumulative and may be exercised singularly or concurrently, at Wells Fargo's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Credit Agreement. Wells Fargo shall not be obligated to preserve any rights Company may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order,

or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Company and Wells Fargo and their respective participants, successors and assigns and shall take effect when signed by Company and delivered to Wells Fargo, and Company waives notice of Wells Fargo's acceptance hereof. Wells Fargo may execute this Agreement if appropriate for the purpose of filing, but the failure of Wells Fargo to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Company shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Minnesota without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Indebtedness.

**THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

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IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

Schwing America, Inc.  
5900 Centerville Rd  
White Bear, MN, 55127

SCHWING AMERICA, INC.

By B. Netjes  
Its CFO

Wells Fargo Bank, National Association  
Loan Adjustment Group  
90 S. 7th Street  
Minneapolis, MN 55402  
Attention: Kristine B. Netjes

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent

By Kristine Netjes  
Its Kristine Netjes  
Senior Vice President

STATE OF Minnesota )  
2009 02 15 WSB )  
COUNTY OF Hennepin Scott

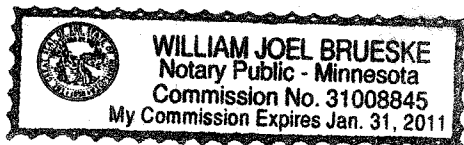
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February, 2009, by Brian Mogens, the Chief Financial Officer of Schwing America, Inc., a Minnesota corporation, on behalf of the corporation.

William Joel Brueske  
Notary Public

STATE OF Minnesota )  
2009 02 15 WSB )  
COUNTY OF Hennepin Scott

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February, 2009, by Kristine B. Netjes, a Senior Vice President of Wells Fargo Bank, National Association, a national banking association on behalf of the national banking association.

William Joel Brueske  
Notary Public



**EXHIBIT A****UNITED STATES ISSUED PATENTS**

<b>FILE NO.</b>	<b>TITLE</b>	<b>PATENT NO.</b>	<b>ISSUE DATE</b>
S51.12-0010	LOAD MONITORING SYSTEM FOR BOOMS	5,359,516	10/25/94
S51.12-0018	LOAD MONITORING SYSTEM FOR BOOMS	5,557,526	9/17/06
S51.12-0024	ARTICULATED BOOM MONITORING SYSTEM	6,202,013	3/13/01
S51.12-0029	BOOM UTILIZING COMPOSITE MATERIAL CONSTRUCTION	6,786,233	9/7/04
S51.12-0031	COMPOSITE MATERIAL PIPING SYSTEM	6,719,009	4/13/04
S51.12-0032	CONVEYING PIPELINE MOUNTED INSIDE A BOOM	6,698,451	3/2/04
S51.12-0033	BOOM STIFFENING SYSTEM	6,755,212	6/29/04
S51.12-0037	AUTOMATIC LEVELING SYSTEM FOR ARTICULATED BOOM	6,351,696	2/26/02
S51.12-0041	PIPELINE AIR POCKET DETECTION SYSTEM	6,375,432	4/23/02
S51.12-0042	UNIVERSAL MAST SUPPORT FRAME AND METHOD FOR MOUNTING MASTS	7,114,690	10/03/06
S51.12-0044	FIRE-FIGHTING SYSTEM HAVING IMPROVED FLOW	6,808,025	10/26/04
S51.12-0045	CONCRETE MIXING TRUCK ANTI-ROLLOVER SYSTEM	6,938,716	9/6/05
S51.12-0046	REAR UNDER-RIDE PROTECTION DEVICE	6,604,765	8/12/03
S51.12-0047	FOLD-OVER CHUTE SAFETY DEVICE	6,719,118	4/13/04
S51.12-0048	SELF LEVELING BOOM SYSTEM WITH ROTATABLE WORKING ASSEMBLY	7,055,613	06/06/06
S51.12-0049	AUXILIARY AXLE SYSTEM FOR CONCRETE PUMP TRUCK	7,398,981	7/15/08
S51.12-0050	BOOSTER AXLE PIVOT MOUNT	7,175,189	02/13/07
S51.12-0052	BOOM UTILIZING COMPOSITE MATERIAL CONSTRUCTION	7,128,094	10/31/06

## UNITED STATES PATENT APPLICATIONS

FILE NO.	TITLE	SERIAL NO.	FILING DATE
S51.12-0056	BOOM UTILIZING COMPOSITE MATERIAL CONSTRUCTION	11/492,403	7/24/06
S51.12-0057	AUTOMATIC DRUM ROTATION CONTROL FOR CONCRETE TRANSIT MIXER TRUCK	11/641,392	12/19/06
S51.12-0059	ELASTOMER LINED, ABRASION RESISTANT PIPE AND METHOD FOR MANUFACTURE	12/009,059	1/16/08

## FOREIGN ISSUED PATENTS

FILE NO.	TITLE	COUNTRY	PATENT NO.	ISSUE DATE
S51.13-0001	OUTRIGGER MOUNTED AXLE ASSEMBLY	Canada	1309706	11/3/92
S51.13-0004	CONCRETE PUMP MONITORING SYSTEM	Canada	2113589	12/17/02
S51.13-0005	CONCRETE PUMP MONITORING SYSTEM	Mexico	187058	11/17/97
S51.13-0008	LOAD MONITORING SYSTEM FOR BOOMS	Mexico	209708	8/16/02
S51.13-0009	LOAD MONITORING SYSTEM FOR BOOMS	Canada	2127515	9/13/05
S51.12-0059	ELASTOMER LINED, ABRASION RESISTANT PIPE AND METHOD FOR MANUFACTURE	PCT	US08/00535	1/16/08

**EXHIBIT B****UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS  
AND COLLECTIVE MEMBERSHIP MARKS****REGISTRATIONS**

<b>FILE NO.</b>	<b>MARK</b>	<b>TRADEMARK NO.</b>	<b>GRANT DATE</b>
S51.22-0001	FOR CONCRETE WITH CONFIDENCE...THINK SCHWING AND DESIGN	1,314,329	1/15/85
S51.22-0002	FOR CONCRETING WITH CONFIDENCE ... THINK SCHWING	1,300,173	10/16/84
S51.22-0003	THINK SCHWING	1,300,172	10/16/84
S51.22-0004	ROLL AND FOLD	1,317,648	2/5/85
S51.22-0006	SFMS	1,833,116	4/26/94
S51.22-0007	ROCK VALVE	3,047,171	1/24/06
S51.22-0009	ROLL & FOLD	3,038,855	1/10/06

**APPLICATIONS**

<b>FILE NO.</b>	<b>MARK</b>	<b>TRADEMARK SERIAL NO.</b>	<b>FILING DATE</b>
S51.22-0010	SMART DRUM	76/694,523	11/28/08
S51.22-0011	SCHWING SELECT	76/694,566	11/28/08
S51.22-0012	SCHWING ELITE	76/694,532	11/28/08

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